

STATEMENT TO THE LEGISLATURE

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Ackerman & Ackerman, P.C.

Recently, the United States Supreme Court, in the case of Kelo v. New London, CT, 04-108 (U.S. 2005), held that the determination of whether to allow the taking of private property through the use of eminent domain purely for economic development purposes was permissible was a matter to be determined by the individual states. The Michigan Supreme Court in Wayne County v. Hathcock, 471 Mich 445 (2004), which was cited by the United States Supreme Court in the Kelo decision, found the taking of private property for purely economic development purposes to be unconstitutional. Although a constitutional amendment is not necessary, the concern is that a subsequent Supreme Court panel may decide to reverse the Hathcock opinion and place property owners in this State in a situation where they have limited protection from governmental intrusion for suspect public use takings. The author is currently working on a proposed draft Constitutional Amendment to ensure that the citizens of the State of Michigan are protected from such unconstitutional takings. The proposed amendment will also ensure that the legislature retains the power to determine public use through specific delegation of statutory authority for specific purposes. The proposed amendment will also ensure that property owners are treated fairly in receiving just compensation for constitutionally valid takings by permitting the consideration of the potential for highest and best use issues such as zoning, variances and assemblage. The amendment will also ensure that business owners are treated fairly in condemnation actions by ensuring that they be paid for business interruption damages resulting from the condemning agency's actions. The author has been working with other interested groups and organizations in a joint effort to provide a reasonable and rational amendment to the Michigan Constitution which will afford the protections demanded and deserved by the citizens of the State of Michigan.